

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3718 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LALJIBHAI GOVINDBHAI PATEL & ORS.

Versus

AHMEDABAD MUNICIPAL TRANSPORT SERVICES & ORS.

Appearance:

MR HK RATHOD for Petitioners

MR GN DESAI for Respondent No.1, 2 & 3

None present for other Respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/08/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioners, Conductors, working in the Ahmedabad Municipal Transport Service, filed this Special Civil Application, challenging thereunder the action of the respondents not to give them promotion on the post of Controller.

2. The promotion to the post of Controller is provided from the post of Conductors. The promotion has to be made on the basis of the award given by Shri I.G. Thakore. The principles and directions have been issued in the Award, that the departmental promotion will be given on the basis of only seniority. The post of Controller is little higher to the post of Conductor. These facts are not disputed by the respondents.

3. The respondents have stated in the reply that if a senior person is considered unfit by the management, then the person next in seniority may be given promotion, but after recording reasons for considering him unfit in routine. The respondents have further stated that the said Award further provides that if the senior most is considered undesirable for promotion because of his past record, an opportunity may be given to him for making representation on the record and if he still is considered undesirable, the next senior most be promoted. It is the case of respondents that after seniority is considered, the department has to look into past record as well as positive fitness for promotion and if the conductor concerned is considered to be unfit or his past record is such that it is undesirable to promote him, then he should not be promoted and the next person will be promoted. In the present case, the promotions have been made by calling conductors according to their seniority for oral interview. All the petitioners appeared in the interview. The petitioners were not given promotion and they have been communicated with reasons for their non promotion.

4. The reasons, on the basis of which, the petitioners have been denied promotions, in general, are as under:

1. You are very much irregular in your duties.
2. Your absenteeism is high which is harmful to our public organization.
3. Looking to your physical health it appears that you cannot do laborious work satisfactorily.
4. Looking to your mild nature it seems that you cannot take work strictly.
5. From your last five years' record it appears that they are called crimes of

theft, misappropriation and misconduct.

The petitioners No.1 and 15 were not given promotion on the basis of second and fourth ground mentioned above. The fourth ground, i.e. their non promotion due to acts of theft, misconduct etc., which have been given for non promotion of these two petitioners have not been controverted by the petitioners and as such their non promotion cannot be said to be illegal. The petition filed by petitioners No.1 and 15 fails and the same is therefore dismissed.

5. The other petitioners were not considered for promotion on the basis of either one or two grounds mentioned above, i.e. that they are very irregular in the services or their absenteeism is high which is harmful to the public organization or from their health it appears that they cannot work laboriously and satisfactorily. The petitioners have controverted these facts. It is true that the promotion may not be merely on seniority, but fitness has also to be considered for the post to which promotion has to be made. The assessment of fitness has to be made on the basis of service record and not only on the basis or grounds for which there is no material. If a person is irregular in service, then it cannot be taken to be a ground for non selection for the two reasons that nothing has been produced on record by the respondents how the persons concerned were irregular in their service and secondly on such irregularity, the respondents have not taken any action against the persons concerned. So far as the second ground that the absenteeism of certain petitioners is high is concerned, it has also not been supported by respondent by producing relevant material on record. Otherwise also, if it is a case of absenteeism, then the proper course would be to punish the concerned Conductors which has not been done in the present case. This ground appears to have been taken only to supersede the senior persons. So far as the third ground that in view of their physical health it does not appear that they can work laboriously and satisfactorily, is concerned, it is suffice to say that it is a ground which could not have been relied upon. The Selection Committee was not an expert body on this question. Merely by saying that the physical appearance or their physique is not good, it is difficult to draw inference, much less by the persons who are not medical experts that the persons concerned may not be fit to work laboriously and satisfactorily. It is not the case of the respondents that they have taken medical opinion on this question for the concerned candidates and thereafter on this ground the promotions

have been denied. The nature of duties of the Conductors and Controllers may not have that much of difference, where physical fitness has to be considered to the extent of denial of promotion. A Conductor has also to discharge heavy duties as he has to travel all the time in the bus and for all hours also. The reasons given by the respondents for non promotion of the petitioners other than petitioners No.1 and 15 are arbitrary, and as such, cannot be allowed to stand.

6. In the result, this writ petition succeeds in part and is accordingly allowed. The annexures 'O' & 'P' are quashed and set aside. The respondents are directed to consider the cases of the petitioners, except petitioners No. 1 and 15, ignoring the aforesaid grounds for promotion on the post of Controller and in case on consideration of their cases, they are found fit for promotion, the same may be given to them accordingly with all consequential benefits following therefrom, i.e. the arrears of fixation, seniority and right of consideration for further promotion, if any given to the junior persons. Rule is discharged so far as cases of petitioners No.1 and 15 are concerned and the Rule is made absolute in aforesaid terms for other petitioners with no order as to costs.

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(sunil)